

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 5708	DATE	5/19/2004
CASE TITLE	Felton vs. Bowen		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]



## MOTION:

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## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] **ENTER MEMORANDUM OPINION:** Felton's motion (Doc 14-1) to file a late notice of appeal is denied.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SCT  courtroom deputy's initials	18000 10111510 1510 20040519 2004 MAY 19 11 45	number of notices date docketed docketing deputy initials  date mailed notice mailing deputy initials	<b>Document Number</b> 158
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOCKETED  
MAY 20 2004

THOMAS FELTON,

Plaintiff,

vs.

EDWIN R. BOWEN,

Defendant.

03 C 5708

**MEMORANDUM OPINION**

CHARLES P. KOCORAS, Chief District Judge:

This matter comes before the court on Petitioner Thomas Felton's ("Felton") motion to file a late notice of appeal. For the reasons set forth below, the motion is denied.

**BACKGROUND**

Felton is currently a prisoner at the Centralia Correctional Center in Centralia, Illinois. He is in the custody of Respondent Edwin Bowen, the facility's warden. On February 19, 2004, this court dismissed Felton's petition for writ of habeas corpus. The judgment was entered on the docket the next day. Under Federal Rule of Appellate Procedure (the "Rule") 4(a)(1)(A), Felton had thirty days from February 20

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(March 21) to timely file a notice of appeal. On April 22, 2004, Felton filed the present motion to file a late notice of appeal.

### **DISCUSSION**

Even though Felton missed the date for filing his notice of appeal, he had thirty days from the March 21, 2004, deadline (April 20) to file a motion for an extension of time. Fed. R. App. P. 4(a)(5)(A)(i). In order to succeed on such a motion, besides filing it by April 20, 2004, Felton would have been required to demonstrate “excusable neglect or good cause” for the tardy filing. Fed. R. App. P. 4(a)(5)(A)(ii). Because the deadline for filing a Rule 4(a)(5) motion for extension of time has passed, the only mechanism for Felton to file an appeal is Rule 4(a)(6). However, in order for a district court to reopen the time to file an appeal, the court must find, *inter alia*, that the moving party did not receive notice of the district court’s original judgment or order within twenty-one days of its entry. Fed. R. App. P. 4(a)(6)(B). Felton’s present motion does not allege that he did not receive notice of our dismissal of his habeas petition within twenty-one days of its entry on the docket.

Felton’s motion argues that the Rule 4(a)(1)(A) clock should not have started running until he received notice of his habeas petition’s dismissal, sometime after February 23, 2004. If this was the case, Felton would have had until April 23, 2004, to file a motion for extension of time under Rule 4(a)(5)(A). However, Rules

4(a)(1)(A) and 4(a)(5)(A) make clear that the relevant date for notice of appeal purposes (including motions for extensions of time) is the date of *entry* of a judgment, not the date the movant receives notice of the judgment. Felton argues that for constitutional purposes, the Rule 4(a) clock should not run against an inmate until he receives notice of a judgment via the mail. In essence, he asks that we adopt an inverse version of the “mailbox rule.” See Jones v. Bertrand, 171 F.3d 499, 502 (7th Cir. 1999).

We decline Felton’s request. The language of Rule 4(a) expressly differentiates between instances where the date of a judgment’s entry is relevant (Rule 4(a)(1)), as opposed to the date when a party receives notice of the judgment (Rule 4(a)(6)). In addition, numerous courts in this district and the Seventh Circuit have held that for habeas petitioners such as Felton, the applicable date for starting Rule 4(a)’s clock is the date the denial of the habeas petition is entered on the docket. See U.S. v. Clark, 1992 WL 373132 (N.D. Ill 1992); Bell v. Mizell, 931 F.2d 444 (7th Cir. 1991); U.S. ex rel. Leonard v. O’Leary, 788 F.2d 1238 (7th Cir. 1986); Centanni v. Snyder, 96 F. Supp. 2d 761 (N.D. Ill. 2000). While Felton’s motion presents various reasons why his untimely filing is due to excusable neglect and good cause, he does not demonstrate that he received notice of his petition’s dismissal more than twenty-one days after its entry. For this reason, he is unable to meet the requirements of Rule 4(a)(6)(B) – the

only avenue for filing an appeal more than sixty days from the February 20, 2004, docket entry of his petition's dismissal.

### **CONCLUSION**

Based on the foregoing analysis, Felton's motion to file a late notice of appeal is denied.



Charles P. Kocoras  
Chief Judge  
United States District Court

**MAY 19 2004**

Dated: \_\_\_\_\_